IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.106 OF 2005

Commissioner of Central Excise ..Appellant.

V/s.

M/s.Deluxe Drums ..Respondent.

Mr.R.V.Desai, senior counsel with Mrs.S.V.Bharucha for appellant.

Mr.Naresh Thakker for respondents.

CORAM : Dr.S.RADHAKRISHNAN & J.P.DEVADHAR, JJ.

DATED : 22ND FEBRUARY, 2006.

P.C. :-

1. Heard learned counsel for the appellant and the respondent. By this appeal, the appellant is seeking to raise the following question of law:-

> " Whether the CESTAT was correct in setting aside the instant case, citing the decision of Tribunal in a similar issue, in case of M/s.Dhimant Trading Co. and others vide order No.-C-II/4433 to 4456/WZB dated 31/12/2002 whereas the Tribunal vide the above orders remanded the case to requantify ? "

2. In the present case, the dispute pertains to denial of credit on account of discrepancy in the dealers invoices and the goods actually received in the

factory. The invoice refers to coils whereas the goods received were ‘sheets’. The Tribunal following its decision in the case of Dhimant Trading Co. as well as Standard Drum Mfg.Co. and several other cases decided on 31/12/02 held that as long as the weight of sheets and weight of coils tally and reasonaly correspond in time between dispatch and receipt of goods, it must be held that there is correlation and in the absence of any allegation that non duty paid coils were received the credit of duty cannot be denied.

3. It is brought to our notice that the Commissioner of Central Excise had filed Central Excise Application No.24 of 2003 against the aforesaid decision of the Tribunal dated 31/12/02 and the same has been dismissed on 24/8/2005. In view of our order in Central Excise Application No.24 of 2003, no substantial question of law arise in this appeal.

4. Appeal is dismissed in limine with no order as to costs.

(Dr.S.RADHAKRISHNAN,J.)

(J. P. DEVADHAR, J.)